



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WESTERN WATERPROOFING COMPANY,
INC.,

Plaintiff,

-against-

ZURICH AMERICAN INSURANCE
COMPANY, et al.,

Defendants.

20-CV-3199 (AJN) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

Notwithstanding lengthy negotiations and a detailed discussion during today's telephonic conference, the parties have been unable to reach agreement as to the appropriate venue for the indemnification and contribution claims asserted by BDG Gotham and ZDG in its Amended Counterclaim (Dkt. No. 92) against Western Waterproofing. No party contends that those claims belong in this action. The Excess Insurers contend that they belong in state court. (*See* Dkt. No. 243.) Western, BDG Gotham, and ZDG contend that they belong in *BDG Gotham v. Western Waterproofing*, Case No. 19-CV-6386 (S.D.N.Y.), which is related to but not consolidated with this action. (*See* Dkt. No. 244.)

In accordance with Judge Nathan's order dated February 18, 2022 (Dkt. No. 224), the parties' proposed case management plan in the above-captioned action remains due two weeks after the district judge has resolved the motion for interlocutory appeal (Dkt. No. 215). If by that time the parties remain unable to resolve the question of whether, where, and under what terms the claims now asserted in the Amended Counterclaim should be refiled, the proposed case management plan shall also include a briefing schedule for all motions addressed to that issue.

Dated: New York, New York
April 12, 2022

SO ORDERED

A handwritten signature in blue ink, appearing to read "Barbara Moses".

BARBARA MOSES
United States Magistrate Judge